

# Build America, Buy America Act Frequently Asked Questions (FAQs)

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Frequently asked questions on the Build America, Buy America Act Frequently Asked Questions.

## **What are the requirements of the Build America, Buy America Act (BABAA)?**

BABAA requires that certain FEMA award recipients and subrecipients comply with the following domestic preference requirements:

1. All iron and steel items used in covered projects must be produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. All manufactured products used in covered projects must be produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55% of the total cost of all components of the manufactured product.
3. All construction materials used in covered projects must be manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

Recipients and subrecipients must ensure their contracts, including purchase orders, subject to BABAA include a required contract clause and self-certification of compliance pursuant to [\*FEMA Interim Policy #207-22-0001: Buy America Preference in FEMA Financial Assistance Programs for Infrastructure\*](#).

## **Which FEMA financial assistance programs are subject to BABAA domestic preference requirements?**



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For a list of FEMA financial assistance programs subject to BABAA please [click here](#).

### **Which FEMA financial assistance programs are NOT subject to the BABAA domestic preference requirements?**

For a list of FEMA financial assistance programs **not** subject to BABAA please [click here](#).

Not all FEMA financial assistance programs are subject to BABAA. Most disaster financial assistance programs are not subject to BABAA requirements, including the Public Assistance (PA), Hazard Mitigation Grant Program (HMGP), Individual Assistance (IA), and Fire Mitigation Assistance Grant (FMAG) programs.

### **When do the BABAA requirements apply to FEMA financial assistance programs?**

Under FEMA financial assistance programs, the BABAA requirements apply to: 1) new awards made on or after January 2, 2023 and 2) new funding FEMA obligates to existing awards or through renewal awards on or after January 2, 2023.

BABAA requirements went into effect May 14, 2022. However, FEMA determined that it was in the public interest to issue a [general applicability waiver of the BABAA requirements](#) allowing for an adjustment period for FEMA, its recipients/subrecipients, industry partners, and other stakeholders to transition to the new compliance and certification process for iron, steel, manufactured products, and construction materials. This waiver period is effective from July 1, 2022 through January 1, 2023. The domestic preference requirements only apply to awards or funds obligated on or after January 2, 2023. The requirements do not apply to awards or funds obligated during the six-month waiver period.

### **What types of projects are subject to domestic preference for procurement under BABAA requirements?**

Domestic preferences for procurements under BABAA requirements only apply to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, the domestic preference does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the



construction site and removed at or before the completion of the infrastructure project. Nor does it apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of or permanently affixed to the structure.

*Infrastructure*, for the purposes of BABAA, includes, at a minimum, the structures, facilities, and equipment in the United States for roads, highways and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure also includes facilities that generate, transport, and distribute energy.

The domestic preference applies to an entire infrastructure project, even if it is funded by both federal and non-federal funds under one or more awards.

If FEMA has determined that no funds from a particular award under a subject financial assistance program will be used for infrastructure, a domestic preference does not apply to that award. Similarly, a domestic preference does not apply to non-infrastructure spending under an award that also includes a covered project.

### **What types of projects are NOT subject to BABAA requirements?**

Technical assistance, management costs, and debris removal projects are not subject to BABAA requirements.

Under the Hazard Mitigation Assistance grant programs, the domestic preference does not apply to design and planning (although domestic preferences must be considered in planning to ensure compliance for construction projects e.g., design-build contracts); project scoping/advance assistance; partnerships; hazard mitigation planning and planning-related activities codes and standards and acquisition and demolition projects where there are no articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. Projects consisting solely of the purchase, construction, or improvement of a private home (e.g., single multi-family residential structures) for personal use (i.e., not serving a public function) do not constitute an infrastructure project. The



domestic preference requirements also do not apply to nonresidential structures that are privately owned and do not serve a public function.

### **What should FEMA award recipients and subrecipients include in contract documents to communicate BABAA requirements to their contractors?**

Recipients and subrecipients must ensure their contracts, including purchase orders, subject to the BABAA requirements include a required contract clause and self-certification of compliance pursuant to [\*FEMA Interim Policy #207-22-0001: Buy America Preference in FEMA Financial Assistance Programs for Infrastructure.\*](#)

### **Can FEMA waive the BABAA requirements under a financial assistance program?**

Yes. FEMA may waive the application of a domestic preference under a financial assistance program when the FEMA Administrator (or the relevant FEMA Associate/Assistant Administrator in charge of a financial assistance program, acting as the Administrator's designee) finds that:

- A) Application of the BABAA requirements would be inconsistent with the public interest (a "public interest waiver")
- B) Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a "nonavailability waiver"); or
- C) The inclusion of iron, steel, manufactured products, or construction materials produced in the United States would increase the cost of the overall project by more than 25% (an "unreasonable cost waiver").

For additional information on waivers, including waiver criteria, waiver types, and FEMA's interim waiver process, please see FEMA Interim Policy #207-22-0001: Buy America Preference in FEMA Financial Assistance Programs for Infrastructure.

### **How much time will the waiver adjudication process take?**

FEMA estimates that the timeline for review and determination of most waiver requests will be 45 calendar days from date of submission. For renewals of general applicability waivers, FEMA estimates the timeline to be 60 calendar days



from date of submission until final waiver determination is made due to the requirement for a longer public comment period.

### **Does FEMA currently have waivers to the BABAA requirements?**

Yes, the FEMA waivers can be found at [fema.gov/grants/policy-guidance/buy-america](https://fema.gov/grants/policy-guidance/buy-america).

Once FEMA posts additional waivers, we will expand this section to describe them.

### **Where can I find additional information on BABAA requirements?**

Additional information, including definitions, can be found at the [FEMA BABAA website](#). You can also refer to the Office of Management and Budget's Made in America Office Website ([Home | Made in America](#)) and the [Build America, Buy America Factsheet and FAQs for Award Recipients \(whitehouse.gov\)](#).



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